G. R. S. IX-5]

Preserve

Previous references.

Ch 249-16(1+2) 1917-18 (Contd)

File No. 205-17

Serial Nos. 1 & 2

Later references.

Ch 43-18 Sec 1-2

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 & 2

Part B for June 1918

SUBJECT.

Memorial of Nanjappa praying for the remission of the sentence of death passed on him in criminal appeal No 108-109 of 1916 on the file of the Chief Court.

2) To the Registrar Chief Court-

No J 5082 Dt 13-6-1918

Forwards a copy of order passed on the prisoner's memorial rejecting it

W. D 88—GPB—50,000—24-7-18

Mir Ab Rahman

19.6.1918 Khan

G. R. S. III—1] 1917

GENERAL AND REVENUE SECRETARIAT

(Courts)

NOTES.

File No. 205-17

FILE HEADING.

Memorial of Nanjappa praying for the remission of the sentence of death passed on him in Criminal appeal no. 108-109 of 1916 on the file of the Chief Court

From

The Registrar, Chief Court of Mysore

No. 562 Dated 26.4.18 Received 29.4.18

Diary No. 12337 Enclos. Recent Spare Copies. - Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards a memorial from Nanjappa praying for the remission of the death sentence passed on him

NOTES AND ORDERS.

Subd.
KN.
29/4

For a statement of the facts of the case please see notes in ct's file 249-16 linked hereto.

An appeal was preferred against the orders of the Sessions Judge acquitting the accused in the

NOTES—First Sheet.

WD 1232—GPB—20,000—18-11-15

General and Revenue Secretariat. | C/o File No. 205 of 1917.

Serial No.

(File linked)

Case
K.V. 29/4

3) The facts of the case have been stated in the note in Courts File 249-16. The ~~Said~~ Sessions Judge acquitted the accused, but after a consideration of all the facts of the case, Government directed the Govt. Advocate to prefer an appeal. The Chief Court, on appeal, have set aside the order of acquittal, ~~convicted~~ and have found the accused guilty, convicted and sentenced him to death.

4) The accused says that he is innocent and prays ~~his~~ for clemency.

5) The learned Chief Judge has very carefully and exhaustively discussed the whole evidence in the case, and met all the points urged by the Sessions Judge in favour of the accused. The discrepancies which are made much of by the Sessions Judge have been shown to be such as not to affect the general credibility of the story. The evidence of the accomplice, his corroboration given both by his confessions of the accused, the strong motive the accused had to get rid of the deceased, and his absconding from the village for nearly 4½ months ~~from~~, immediately after the murder leave no doubt [illegible]

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20.3.18—E.

G. R. S. III-2]

General and Revenue Secretariat. | No. File No. 205 of 1917.

Serial No.

guilt of the accused. There being no extenuating circumstances the extreme penalty has been imposed. It is significant that the accused did not satisfactorily explain his absence in ~~his statement~~ his statement. It is a point for orders whether the petitioner deserves any clemency.

Sd
30/4

Schedule Malta

1st Member

I have perused the proceedings of the Court of Inquiry and the Court Martial. The facts in connection with the case are fully set forth in the Summing up. The Court Martial does not appear to have been in possession of any evidence to show that the deceased and the accused (3rd accd) were concerned. I would also draw attention to the fact that the appellant applied for ~~[illegible]~~ committing the alleged crime. But when the Court found that he committed the crime, he does not believe that the confessions of the 1st & the 2nd accd. were false and that also of the appellant Kenton has been sufficiently corroborated as well

NOTE—Contn. sheet.

General and Revenue Secretariat. | Courts File No. 205 of 1917.-18.

Serial No.

Courts - Had the Head Clerk yesterday been adequately dealt with the duties objected raised & the Lessons learnt & has arrived at the conclusion that the punishment - was the principal offender while the three Moos and the Upper Kamptee were his accomplices. The proceedings of this Court cannot be quashed - And as regards the sentence also, the punishment by being the principal offence, by the Higher sentence & upon the whole punishment of the Law, there being no extenuating circumstances to justify any modification of the sentence in his case - the Memorial does not require, appear me to deserve any consideration and may be rejected

3/5/18

7) May be disposed of by circulation

5792
4.5.18

Secy
4/5/18

Secy
8/5/18

8-5-18 do

9) Circulate

CRS
9/5/18

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-8-18—S.

(For Disposal by Circulation)

No. C. 670

11. 5. 1918

GENERAL AND REVENUE SECRETARIAT.

COUNCIL MATTER.

SUBJECT.

Memorial of Nanjappa praying for the remission of the sentence of death on him in Criminal appeal No.108-109 of 1916 on the file of the Chief Court.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

C S Balasundaram
Chief *Secretary to Government.*

10th May 1918.

Extraordinary Member of Council. 11/ Lal & agree. 19.5.

First Member of Council. 12/ Opinion recorded.

Second Member of Council. 10/ Agree with the 1st Member

262/11.5.18

WD 2670—GPB—1,000—11-5-17

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat. | CS File No. 205 of 1917.

Serial No.

13)

Subd. with a D. F.N. or D.S.N.

KN.
22/5

In favour of approval

22/5

4214/23/5.

Hist Memby

24/5

Fair draft note signed as per Memo is put up.

25/5/18.

D.F.A submitted

Draft

27/5/18

6214/27.5.18

NOTE—Contn. sheet.

Final Note by the First Member of Council

Subject:—

Memorial of Nanjappa for the remission of the sentence of death passed on him by the Chief Court in Criminal appeals Nos.108 and 109 of 1916.

Pages 1, 2, 3 of office notes in the linked file.

C

The facts of the case have been stated in the Notes in Courts file 249 of 1916. Three persons Mancha, Mada and Nanjappa were tried before the Acting Sessions Judge of Mysore on a charge of murder. The accused were acquitted on the ground that the evidence disclosed in the prosecution could not be believed.

D in the linked file

A

2. On recommendation of the District Magistrate of Mysore, Government directed an appeal to be preferred to the Chief Court. The Chief Court have set aside the order of acquittal and sentenced the 1st and 2nd accused to transportation for life and the 3rd (the present memorialist) to death.

3. The Sessions Judge does believe the evidence as far as the existence of bitterness of feeling between the deceased and the memorialist is concerned. He also does not dispute that this afforded sufficient motive for committing the alleged crime. But when the question as to who committed the crime comes, he does not believe the confessions of the 1st and the 2nd accused, Mancha and Mada. The confessions of the approver Kemba also have been sufficiently corroborated on material points. The learned Chief Judge has unequivocally met the doubts and objections raised by the Sessions Judge and has arrived at the conclusion that the memorialist was the principal offender, while

while the other two and the approver Kemba were his accomplices, The memorialist has accordingly been sentenced to suffer the extreme penalty of the law. There are no extenuating circumstances to justify any mitigation of the sentence.

Page 4 Office Notes & N.

4. The Council accordingly propose that the memorial may be rejected.

25th May 1918

First Member of Council.

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council on the subject of* the memorial of Nanjappa praying for the remission of the sentence of death passed on him in Criminal appeal No.108-9 on the file of the Chief Court *for His Highness' gracious approval.*

C. Rajagopalachari

Dewan.

30th May 1918.

882

C.670

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

Memorial of Nanjappa praying for the remission of the sentence of death passed on him in Criminal appeals Nos 108 and 109 of 1916-17.

1341

Order.

~~KRW~~

4/6/18

Chief Secretary
5-6-18

67/5-6-18.

4333/3.6.

7/6

5.6.18

In the Matter of a Memorial

of Nanjappa praying for the remission of the sentence of death passed on him in Criminal appeals nos. 108 and 109 of 1916-17 on the file of the Chief Court.

His Highness the Maharaja

directs

that the memorial be rejected.

20-6-18

CC

Dewan.

Draft CBB

8
7.6

G. R. S. III-2

General and Revenue Secretariat.

Ab File No. 205 of 1917.

Serial No.	
	Subd. with draft & fair of H.H's order & a draft to the Regr, chief court K.N. 7/6 VRL. For favour of Dewan's approval EB. 7/6 2nd Chief Secretary In favour of Signature. 6454 8/6/18 Dewan CBJ 8/6/18 VY 8/6/18 Signed by the Dewan - 10.6 18 Issue CBJ 12/6/18 12/12/18.
Rec-63	
2	To the Registrar 4th court No J 5082 13th June 1918 Forwards a copy of order passed on the Prisoner's memorial rejecting it.

NOTE—Contn. sheet.

No 562
Encl. 3 with 4 records in a separate packet.

Bangalore,

Dated 18th April 1918.

From

THE REGISTRAR OF THE
CHIEF COURT OF MYSORE.

To

THE SECRETARY TO GOVERNMENT,
~~GENERAL AND REVENUE DEPARTMENTS.~~
of His Highness the Maharaja of Mysore.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by Nanjappa 3rd accused in Mysore Sessions Case No. 2 of 1916-17 on the file of the Sessions Judge of Mysore Division and 3 Respondents appellant in Criminal Appeals Nos 108+109 of 1916-17 on the file of this Court.

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Registrar.

GPB—1,000—16-8-12

Tr. 546

Left thumb mark of condemned prisoner Manjoffa No 899

Marked before me

Malikarjunabba

Jailer

11/4/1918

Nominal Roll of Convict No- 899. Nanjappa Residence of Bettagowdanakere Kundumalli Taluk Mysore District Caste Sivaliar Hindu Occupation Agriculture Percentage 42

Section	Original Sentence and date of Award	Appearing Court and numbers of Cases in which Convicted	Date of commencement of Sentence deducting Remission earned	State of health	Date of Appeal if any	Date of release from Jail	Remarks
302. I.P.C.	Sentence to death	In the Chief Court of Mysore Bangalore in Criminal Appeal Nos 108 and 109 of 1916-17	Nil	Good	On Appeal Sentenced to death	Jail	

Mysore Jail
11th April 1918

S. Subba Rao
Superintendent
Mysore Jail

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 3rd day of April 1918.

Present.

Sir [illegible] C. HILLS, Kt. Chief Judge,

and

Mr. Justice T. [illegible] A IYER.

Criminal Appeals Nos. 108 and 109 of 1916-17.

The Government of Mysore ... Complainant ... APPELLANT

(By Mr. C.[illegible] Doraswami Iyer, Government Advocate)

Vs.

1. Munchegge
2. Nada . . Accused .. RESPONDENTS
3. Nanjappa

(By Mr. B. Ramanna)

Criminal Appeals against the orders of acquittal passed by the Sessions Judge of Mysore in Mysore Sessions Cases Nos. 18 of 1915-16 and 2 of 1916-17.

Mr. B. Subbarao.

These appeals coming on for hearing on Friday and Saturday, the 22nd and 23rd days of March 1918, the court delivered the following :-

J U D G M E N T.

These are appeals by the Government of Mysore against the acquittal by the acting Sessions Judge of Mysore

Mysore of three persons tried by him on a charge of murdering one Manjundia on the 28th of January 1916.

The delay that has occurred in bringing the appeals to a hearing is greatly to be regretted. They were presented in March 1917 shortly after the expiry of the six months allowed by Article 157 of the Schedule to the Limitation Regulation, and till the end of the following July were delayed because the notice issued to the principal accused in the case was not served upon him. The subsequent delay is due to the time occupied in preparing the record for printing and getting it printed in the Government Press.

The accused have not retained any one to represent them but we were able to avail ourselves of the presence in Bangalore of Mr. B. Ramanna of Mysore who conducted their defence in the Court of Session, and who kindly undertook to perform the same office for them in this court. We have thus had the advantage of a full argument on both sides of the case.

Mr. Ramanna objects to the hearing of the appeals on the ground that they are barred by limitation. They were presented eleven days after the expiry of the period of limitation. It is explained by the Government Advocate that the judgment copies received by him from the District Magistrate were accidentally mixed with some other papers and their receipt was not registered in his office. They were shortly afterwards discovered when some papers were sorted to be sent elsewhere, and the appeals were then presented without delay.

This explanation in our opinion forms a sufficient ground for excusing the delay under the provisions of

Section

section 5 of the Limitation Regulation. The delay was due to an accident, an accident caused no doubt by the negligence of somebody in the Government Advocate's office, but still an accident different in kind from those mistakes in calculation, or in selecting the Court in which to present the appeal, which in some circumstances have been held to furnish no sufficient ground for the admission of an appeal after the prescribed period has expired. It is more akin to the cases in which papers are lost or delayed in the post, and such cases are ordinarily considered to justify the exercise in favour of the appellant of the discretion allowed by section 5. We have in these circumstances heard the appeal.

The trial in the Sessions Court was conducted with the aid of three assessors all of whom agreed with the Sessions Judge in acquitting the accused. The record does not contain any reasons for the opinions given. The first assessor stated as his opinion that the case was not proved, and the others concurred. We have therefore in considering these opinions to content ourselves with their general statement, and are deprived of the benefit of knowing how far any of them accepted the evidence as true and what portions of it they were unable to believe. The notes show that the Judge summed up the case to them, and that he is entitled to do, under section 309 of the Code of Criminal Procedure; but it has to be remembered that the assessors are present to help the Judge, and not the Judge the assessors, though of course he will be ready to assist them with any explanations they may require; what the Judge should endeavour to obtain from an assessor is his own independent opinion on the facts, and if possible the reasons with which he is prepared to support it: and in order to do that he should avoid as far as possible the presentation of his own opinion on the evidence before he has ascertained theirs. For this reason

reason it was observed in 9 Cal. 875 that the power given by section 309 of summing up to assessors should be exercised only in intricate cases, and this also was the opinion expressed by Sir Bhashyam Iyengar in 24 Mad. 523 (at pp.537, 538). In the present case we do not know what was the nature of the Judge's summing up, and certainly the facts are not so complicated nor the evidence so voluminous as to require any explanation or marshalling to enable the assessors to grasp the effect of the statements of the witnesses. We may perhaps assume that the Judge's summing up was confined to an exposition of the law on the subject of the corroboration of accomplices, but even so in the absence of the reasons which guided the assessors to their conclusions, we are unable to attach to their opinions the weight which we would desire to give them. We cannot say that they had any better reasons to offer than those which have led the Sessions Judge to his own conclusion.

To these we have given our best consideration and we have not overlooked the fact that at any rate the conclusion drawn from them has the concurrence of the assessors but we think nevertheless that the appeal is justified, and must be allowed.

There is no doubt that the deceased Nanjundia left his house on the evening of the 28th of January 1916 to go to his Kana where there were some stacks which required watching. He did not return in the morning and his stepmother Lingamma went to look for him: she found his shoes and staff at the Kana but he was not there and she returned home and sent her son Lingiah to look for him, and in the evening told the patel who reported the absence of Nanjundia and the finding of his shoes and stick. Lingiah's search was fruitless and on the 1st of February he addressed a petition

petition to the Amildar in which he expressed his belief that his half brother had been murdered, and his suspicion that the third accused Nanjappa and his friend the first accused Nancha had a hand in the murder. The body of Nanjundia was found on the 3rd of February in a cistern in an irrigation channel some 2½ or 3 miles from his Mana, and on examination of it shewed that he was murdered by the crushing of his testicles. So far the Sessions Judge accepts the evidence and it is unnecessary to discuss it; it is clear enough.

The Sessions Judge also accepts the evidence that third accused Nanjappa was embittered against the deceased owing to the part he had taken in a dispute between himself (Nanjappa) and his brother's widow Doddamma. Nanjundia had interfered to help Doddamma to obtain possession of her husband's house and land and gave evidence for her in a criminal case. Nanjappa by way of compromising the case gave up the house and land, and Doddamma promptly mortgaged part of the land to Nanjundia with possession and with a crop standing on it which had been grown by Nanjappa while he was in possession. He endeavoured to obtain the crop or a share of it, but Nanjundia would not give him anything. This was about a fortnight or so before the murder, and there can be no doubt that Nanjappa's feelings against the deceased were likely to be very bitter.

The first accused Nancha is according to the evidence a person who assists Nanjappa in his field work, and he and the second accused Mada who is related to him are charged with the commission of the murder along with the third accused and one Kempa, who has given evidence as an approver. Kempa is also related to accused 1 and 2, and these three are low caste persons and were according to

Kempa

Kempa employed by Ranjappa to help him with the murder on the promise of a reward of Rs. 100/-. The first and second accused were arrested in Yedemaranahalli in Kankanahalli Taluk on the 7th of February, and Kempa was arrested on the 9th. On the 12th all three were taken to Mysore, and they all made confessions before a magistrate there on the 13th: Kempa was afterwards taken as an approver, and in the Court of the Committing Magistrate repeated his confession, as did the other two. Afterwards in June Ranjappa was found and arrested, and was put before the Committing Magistrate: Kempa then denied any knowledge of the murder, but the Committing Magistrate thought there was sufficient evidence to justify a committal, and all three accused were placed on their trial before the Court of Session. There Kempa returned to his first story and gave evidence against the accused.

It is on his evidence that the case principally rests, and it seems obvious that that evidence having been once withdrawn requires corroboration before it can be accepted against his alleged accomplices. But there is technically quite sufficient corroboration if the evidence is true.

As against Nanche (1st accused) there is his own confession, there is the evidence of Bhoga Nanjiah, and Exhibit to which reference will be made shortly, and the evidence of his friendship or companionship with Ranjappa, and, for what it is worth, the fact that he disappeared from the village practically simultaneously with the deceased Ranjundia.

Against Linda there is his own confession and little else, unless it be his departure from the village along with Nanche.

Against

Against Nanjappa there are the confessions of his co-accused which though made behind his back can be considered for what they are worth under section 30 of the Evidence Act, the evidence of motive, the evidence of Bhoga Nanjia and Mantia, and the fact of his disappearance from the village. The evidence of Bhoga Nanjia and Mantia (prosecution witnesses 6 and 7) is to the effect that on the evening of the 28th of January they went with Nanjundia to the fields, each going to his own Kana: Nanjundia's Kana was separated by a field (the sketch shews a distance of 117 yards) from that of Devajamma Mantia's employer, and Bhoga Nanja's aunt, and Bhoga Nanja and Mantia slept at the latter, Nanjundia going to the former place. On their way they met the first and third accused going towards the Kana of the witness Racha where the third accused was keeping his grain for threshing purposes. In the night Bhoga Nanja and Mantia heard a cry, which roused them but hearing nothing more they went to sleep again.

This evidence is to a great extent discredited by the Sessions Judge on the ground that the witnesses are on friendly terms with Devajamma who is on bad terms with the third accused. But neither of these positions is very clearly established. Devajamma had obtained a decree on a mortgage against Nanjappa but there is no evidence that she was incensed against him on that account: it is not shewn that he was resisting execution or that she was pressing it at the time. Nor is there any evidence that her nephew was likely to be very anxious to espouse her cause against anyone apparently it was the deceased Nanjundia who helped her to get her decree, and this might afford an additional cause of offence against him in the mind of the third accused, but does not suggest that Bhoja Nanja was a very active partisan.

The

The reasoning of the Sessions Judge does not in these circumstances rest on any very solid foundation and there does not seem to be any good ground for rejecting the evidence of these men. The Sessions Judge believes or seems to believe that they did go together to the fields with Nanjundia, and there is no improbability in their statement that they met the first and the third accused on the way. The third accused no doubt says that he had left the village on a day which may have been a day or two before that, (12 days after Sankaranti would be the 26th of January) but he has called no witness to support that allegation. Accepting this evidence we have it that shortly before the murder the first and the third accused were together in the neighbourhood, and the third accused said that he was going to his Kana, that is Raoha's Kana as is proved by Raoha: there is nothing in this witness' cross-examination to cast doubt on his veracity.

As to the cry which B. ~~Kegi~~ Nanjia and Mantia say they heard there is no doubt the fact that Kempa at one time says the deceased made no sound when he was attacked: it is however likely that he would have uttered a cry which even though quickly stifled might in the stillness of the night have reached the ears of the witnesses. They are probably more trustworthy than Kempa in details, but the point is not of great importance.

The medical evidence as to the presence of partially digested food in the stomach of the deceased, though it does not prove much as to the time of the ~~and~~ murder does not cast any doubt on the evidence of those witnesses who do not profess to be sure of the time at which the cry was heard.

The evidence of motive has been referred to above. Linganna says that when the deceased was threshing

the grain taken from the mortgaged land, the third accused who was passing by said "Will I let you eat this?" but whether this threat was or was not actually uttered there can be no doubt that the third accused had reasons which may have appeared to him sufficient to induce him to get rid of his adversary. The evidence of the 9th and 10th prosecution witnesses which is not impeached shows that his efforts to get some of the grain were frustrated by the refusal of the deceased to give him "even a single seer" of it.

Beyond discussing some discrepancies between the confessions of the first and the second accused, principally in the matter of the taking of an oath before the murder, the Sessions Judge does not say what is his opinion of those statements. Possibly as they were retracted in his court he thought it best to disregard them; but there is no doubt that if they are voluntary they are evidence corroborative of the statement of the approver Kempa notwithstanding their retraction. The magistrate who recorded them has certified to his belief that they were voluntarily made, and they were repeated before the Committing Magistrate. In the Sessions Court the accused did not allege that they were induced to make them by any promise to take them as witnesses, but alleged that they were forced by torture to say whatever the police wanted them to say.

While it is certainly difficult to believe that these three Malayas voluntarily confessed their guilt merely to unburden their consciences, it is also difficult to believe that if the tortures described by two of them in the Sessions Court had been applied to them shortly after their arrest they would not have revealed them even

to

to the Committing Magistrate. Kempa when he withdrew his statement on the 21st of July did not allege any torture: he merely said he had been tutored.

It is possible that these confessions were the result of a kind of competition among the accused to be taken as witnesses but there is nothing to show that they were induced by promises, and the discrepancies pointed out by the Sessions Judge are not incompatible with their substantial truth. The first accused both before the Mysore Sub Division Magistrate and before the Committing Magistrate spoke of an oath which they took, an oath of secrecy apparently: the second accused who made a very short statement in Mysore said nothing about an oath, but in the Committing Magistrate's Court perhaps to support the first accused, he said he took an oath 'that he would come'. Kempa mentioned no oath in his confession in Mysore but in evidence he spoke of an oath by the third accused in support of his promise to pay Rs. 100/-. These are undoubtedly discrepant statements but the discrepancy can hardly be said to affect very greatly their general credibility.

The Sessions Judge appears to be mistaken to some extent as to the second discrepancy noted by him. Kempa does not say that the subject of the murder was broached to him after dark: he says the sun was a Maru above the horizon when the third accused called him, and in his confessional statement (Exhibit P1) he says the hour was 'evening'. These statements do not materially differ from those of the first and the second accused on this point. The other point is a small one: in Exhibit P1 Kempa says "I was near my field: he took me, Manesa and Mada to his field"; in his deposition he says, "he

took

took me into the village of Hosavalli and afterwards brought the first and the second accused to me and then took us all to his field". The first accused said "Kempa was at the field. He(3rd accused) then took us and him to his own field." The second accused said "he came and took me Mancha and Kempa to his field" but does not say where they met Kempa. None of them says they were taken to Kempa's field, though the first accused no doubt suggests that they went to some field where Kempa was. That might have been in Hosavalli village, but however that be the discrepancy, such as it is, is between the statement of Kempa in the court and his earlier statement Exhibit P_1 which tallies with what the other accused said. By the time he was examined in the court of Sessions his memory as to a small detail of this sort may not have been very clear.

There does not seem therefore to be any good reason for rejecting the confessions as being probably untrue, but a confession may of course be true and yet inadmissible in evidence: a confession procured by extortion or inducement is perhaps at least as likely to be ~~to~~ true as false.

It has been observed above that there is a difficulty in accepting the view that these three men all voluntarily conceived the idea of making confessional statements shortly after their arrest, and had they alleged that the police held out to them promises as an inducement it would have been very much easier to believe them than it is to accept their present allegation of extortion by torture. The magistrate at Mysore who recorded the confession did not apparently make any effort to ascertain why they were made: he asked the makers whether they were making them voluntarily

but he did not ask them what was their idea in making them nor did he tell them what the consequence was likely to be. And there is nothing on the record to indicate that he took any precaution to secure for them any freedom from the influence of the police at the time at which the confessions were recorded. The Sub Inspector ~~===~~ says he took them to Mysore because they were "in a mood to make some confessions", but on the important question how they came to be in that mood the only evidence appears to be their own allegations in the Sessions Court and on them it is impossible to place any reliance except on that of Kempa who was examined as a witness. Mancha was arrested on the 7th of February and Kempa on the 9th: Mada was brought by a constable to the Sub Inspector from Yedamaranahalli on the evening of the 7th, was kept at Malvalli on the 8th and / "arrested" formally on the 9th. This kind of custody without arrest is it may be incidental-ly observed not warranted by anything in sections 160 or ~~==~~ 161 of the Code of Criminal Procedure and is in fact wrongful confinement: it seems to be adopted by the police in Mysore as a device for evading the provisions of section 60 and 61 of the Code, but it is altogether illegal and should not be countenanced by the superior officers of the department.

The three men were not put before a magistrate until the 13th of February, and it is not explained how that is ~~reconcild~~ reconciled with the provisions of sections 61 and 167 of the Code. Kempa was taken to Hosavalli on the 10th to produce some property, but the others apparently remained in Malvalli until the 12th when they were sent to Mysore, where they were kept for the night till a magistrate could be found to record their confessions.

Whether

Whether or not the police can reconcile their procedure with the law, a matter with which we are not now directly concerned, the circumstances certainly ~~d~~ do not remove the suspicion which necessarily attaches to the simultaneous confessions of a number of men in the custod of the police.

Kempa's statement in the court of Session is to the effect that he was arrested at daybreak on a Wednesda (the 9th of February) by the Jemadar who said nothing to him about the case: all that day no one questioned him, and on the next morning the Inspector asked him what he knew and he told him everything. Experience suggests that it is permissible to doubt the accuracy of this statement: but the Jemadar's statement shews that he merely made the arrest and sent Kempa to Malavalli with a constabl so that whatever questioning there may have been before the Inspector took the prisoners in hand was probably only by the constable who had him in his custody and who is not perhaps likely to have offered inducements to confess. Kempa says that no such inducement was offered by anyone.

From Kempa's statement it does not of course follow that the other men the first and second accused were not subjected to any inducement to confess, but they have not said that any hope was held out to them, or promise made to them, and though having regard to their ignorance and low position in life we ought not to make too much of that, still if the police had made any kind of offer or promise the accused might be expected to have said so when retracting their confessions.

On the whole having regard to the fact that the magistrate to whom they were made believed them to be voluntary, and to the fact that the Sessions Judge has not expressed

expressed a contrary opinion unless that be involved in his view that they are probably untrue, there is not sufficient reason to pronounce them inadmissible in evidence. As they have been retracted they may not be sufficient to support a conviction, but they may serve as corroboration of the approver's testimony. And as we have observed, there is nothing in them to lead us to discredit them as untrue.

The story told by the approver is that the murder was arranged by the third accused, and that he and the first and the second accused were taken to Rachia's Kana which he calls the third accused's Kana in the evening of the 28th of January: they waited till 'about midnight' when the third accused went and ascertained that Manjundia was asleep at his Kana; they then went there and killed him, the third accused holding him by the neck or head the witness and the second accused holding his legs, while the first accused crushed his testicles. They carried the body to the cistern where it was found, took two stones from the adjoining revetment and tied them to the body and sank it in the cistern - and returned to their villages by the time when "it was nearing cock crow. The midnight had passed away". In another place he says the moon rose "towards the morning after we came home".

The Sessions Judge discredits this story for several reasons set out by him in his judgment. The first is that if the murder had been committed as alleged, at the Kana, the body would in the circumstances probably have been left there and not carried a long distance to the cistern. It does not seem that there is much in this objection. Kempa very likely was not consulted about the disposal of the body and was it may well be supposed willing to leave it where it lay, but the third accused

must have known that he would be suspected of the murder if the body was found near the Kana, and had a strong reason for putting it out of sight. The selection of a place at some distance (the sub Inspector says three miles) may have been due to the fact that there was there a suitable place with sufficiently deep water in which to sink the body, while the labour and danger of detection involved in digging a grave might well have seemed, and probably would have been, greater, than that involved in carrying the body on a dark night for a few miles to the cistern. The expedient of sinking a corpse in a tank or channel to avoid detection is one that is familiar to all who have had any experiance of trials for murder in Southern India or indeed anywhere else, and it is easy to call to mind cases in which the body has been carried for considerable distances for that purpose. In the present case there seems nothing unnatural in the adoption of this expedient, and there is every probability that Kempa's statement on this point is true. It is clearly established that the slippers and stick of the deceased were found at the Kana and if he had as the Sessions Judge surmises gone somewhere else before he was murdered he would in all probability have taken them with him: he went out with the intention of watching his stacks at the Kana, and nothing in the evidence suggests any reason why he should have abandoned that intention and gone off towards Hosavalli leaving his stick and shoes behind him.

The next point taken by the Sessions Judge is that the Kana was an unsafe place at which to commit a murder being near the place where Bhoga Nanjéa and Mantia must have been known to the accused to be watching or sleeping. There is more in this objection, but it has to be remembered that the accused may not have had much

Choice

choice in the matter; they had to take their prey where they could find it, and they may well have reckoned that four men could so arrange matters as to deal with one man asleep without arousing persons sleeping 100 yards or so away. They doubtless had to take some risk but it cannot be said that they must have deemed the danger so great that it would be unsafe to believe that they were willing to face it.

The next point taken is the fact that no coat was found on the body, and while Kempa says the deceased was wearing no coat Linjiah says he went out with a coat on and Linjamma gives somewhat doubtful support to that statement. It is no doubt probable that if the deceased went out with a coat on he continued to wear it through the night, the weather being cold at the end of January, but Linjiah may have been mistaken about the coat: Linjamma says she could not see what the deceased wore under his cumbli and this is very likely. It seems very unsafe to base any inference as to the truth or otherwise of Kempa's statement on this point, on the recollection of Linjiah alone. The panche was probably removed with the cumbli, and there is no difficulty in conceiving that they could have been disposed of in a place where the efforts of the police were unavailing to discover them. There is nothing to shew that the police searched Yedamaranahalli, for instance, and we do not know where the 3rd accused went to after the murder.

Another point noticed by the Sessions Judge is the conflict between the medical evidence which is to the effect that there was no mark of violence on the throat of the deceased, and the statement of Kempa that the 3rd accused seized the throat and held the deceased down. There is really nothing in this: death according to the medical witness was due to the crushing of the testicles, and this he

he says would be enough to cause it without anything else. The deceased is likely to have been sleeping with his cumbli over his head and whether the third accused actually pressed him down by the neck or the mouth is not likely to have been distinctly clear in the darkness to Kempa who was holding one of his legs. Even if the neck was pressed the cumbli might have prevented the pressure from leaving a mark recognisable when the body was found.

The question of the hour of murder is adverted to by the Sessions Judge with ~~her~~ reference to the medical officer's statement as to the presence of partially digested food in the stomach of the deceased, but he does not draw any decided inference against the prosecution on this point. Considering the distance from the Kana to the cistern, and the time necessary for carrying and disposing of a heavy body in that place, it is probable that the hour selected for the murder was not so late as might be inferred from Kempa's statement that it was 'about midnight', or the first accused's statement that it was 'after midnight'. Those are rough approximations to which no great value can be attached.

The only other point of importance on which the Sessions Judge criticises the evidence has relation to the finding of the kuradige worn by the deceased in the house of Kempa. Kempa's statement that the third accused gave it to him and told him to put it in the thatch of his house is very likely false but there does not seem to be any adequate reason to doubt that the police recovered it from Kempa. His possession of it however does not afford corroboration against the accused: it corroborates him only to the extent that it supports his story that he himself was one of the murderers.

The circumstances above considered do not seem to warrant the rejection of his story as probably untrue.

On

On the contrary there seems to be no reason to doubt that the murder was accomplished quickly and quietly at the Kona and the body was carried off to the cistern and disposed of therein.

The strongest point against Kempa is the fact that he on the second occasion on which he appeared before the Committing Magistrate, denied the whole thing and said that he had been tutored to give evidence. That was the occasion on which the third accused was first brought before the court, and Kempa explains that the third accused then frightened him and he was afraid to give evidence against him. It may not be easy to accept this as a satisfactory explanation, but it does not seem possible to reject his statement in the Sessions Court on this account. Mancha, Linda and he are persons whom the third accused is very likely to have ~~el~~ enlisted to help him, and he had twice repeated his story, once in Mysore before he knew he was to be pardoned, and again in the Committing Magistrate's Court, after pardon had been tendered to him.

It is not easy to ~~di~~ discover the motive which induced him in July to retract these statements; it may have been fear as he says, or it may have been the knowledge that if the third accused was convicted his hope of reward would disappear: It is not the least likely to have been the prickings of conscience, for his conscience did not deter him from giving evidence against his own relations.

Whatever it was its effect had disappeared before the trial came on in the Court of Session and it does not seem improbable that it would have disappeared even in the Committing Magistrate's Court had that officer asked a few

more

more questions instead of accepting as final the mere allegation that the Inspector had tutored the witness.

The story told in the Sessions Court is natural and probable and it has the advantage that it was told not by Kempa alone but by the first and the second accused also shortly after the discovery of the murder. It is corroborated in material particulars and it would be wrong to reject it.

The principal corroborative evidence has already been discussed; against the first accused there is his own confession, the evidence of Bhoga Nanjia and Mantia, and evidence which there is no reason to reject, that he was helping the third accused in his agricultural work, and his removal of himself to Yemmaranahalli at the time of the murder. Against the second accused there is his own confession and the fact which is not worth much that he was likely to be associated with his ~~relatives~~ relations Kempa and Lancha in an operation requiring the assistance of two or three men, and there is his disappearance with Lancha from the village at the time of the murder.

Against the third accused there is evidence of a strong motive, there is the evidence of Bhoga Nanjia and Mantia, and there is his ~~p~~ disappearance from the village which is not satisfactorily explained.

All these circumstances are proved and they lead to the conclusion that Kempe's narrative is true; it follows that the acquittal must be set aside in the case of all the accused and all must be convicted of murder.

As to the sentences, we do not think we can allow the acquittal and the long interval which has elapsed between the acquittal and this date, to deter us from

passing

passing upon the third accused Kanjappa a sentence of death, but in the case of his hired helpers the first and the second accused, we may, having regard to these circumstances, sentence them each to be transported for life.

(Sd.) Leslie C. Miller

CHIEF JUDGE.

(Sd.) T. Paramasiva Iyer

JUDGE.

True Copy

H.C.

S. Venkata Ranga Iyengar

Dep. Registrar.

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G. R S. VI—S-III/33]

DRAFT.

SUBJECT .....

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Section.
File No.
Serial No. 2

No. J 5082 (Records)

Diary No. of letter replied to.....

To

The Registrar of the Chief Court of Mysore.

GENERAL AND REVENUE SECRETARIAT,

( )

, the.....*191*

Date of issue 13 6 18

Signed by M. H. Jayaram Aiyar

SIR,

I am directed to forward herewith for information of the Judges of the Chief Court and for communication to the prisoner Nanjappa

.....

undergoing sentence of death

.....

in the Mysore Jail, copy of order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial rejecting it

2. The entire records received with your letter No. 562 dated 26th April 1918 are herewith returned.

I have, etc.,

For Chief Secretary.

KW